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COMMITTEE AGAINST TORTURE

Twenty-eighth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 511th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 3 May 2002, at 3 p.m.

Chairman: Mr. BURNS

CONTENTS

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Fourth periodic report of Denmark (continued)

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.511/Add.1.

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The meeting was called to order at 3. p.m.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 6) (continued)

Fourth periodic report of Denmark (continued) (CAT/C/55/Add.2)

1. At the invitation of the Chairman, the members of the delegation of Denmark took places at the Committee table.

2. Mr. LEHMANN, (Denmark) said that the replies to the questions asked by the members of the Committee had been grouped into five categories: Denmark's criminal law system; police matters and crowd control; prison conditions, including the practice of solitary confinement; the rights of asylum-seekers and the specific issues of the Thule case; the status of the Israeli Ambassador to Denmark; and the use of physical force in psychiatric wards.

3. Ms. AXELSON, (Denmark) in response to the question about inserting a provision into the Criminal Code defining the concept of torture, said that the issue had been thoroughly discussed prior to Denmark's ratification of the Convention and that, in the view of her Government, Denmark's Criminal Code had a wider application than the provisions of the Convention. It could be argued that specific provisions in the Criminal Code would make it possible to take into account the grave nature of the crime at the moment of sentencing, but it was already a general principle that the courts had to consider the circumstances of the case in determining the penalty. Consequently, account had to be taken of the seriousness of the offence, information on the character of the offender, including general, personal and social circumstances and the conditions before and after the offence, including the motives for committing it. There was no doubt that, if the offence was characterized as "torture" and coming within the scope of the Convention, it would be considered by the court as an aggravating circumstance when the sentence was passed.

4. With regard to the case against Augusto Pinochet lodged with the Danish Director of Public Prosecutions by 15 residents in Denmark of Chilean origin, she had a copy of the decision by the Ministry of Justice which she would pass on to the Secretariat. The question as to which acts came under Danish jurisdiction had been the subject of considerable attention in Denmark and the Ministry of Justice had set up a committee to examine the provision in the Criminal Code concerning Danish jurisdiction.

5. With regard to the question concerning the use of solitary confinement in pre-trial detention (paras. 117-128 of the report), pre-trial detention was regulated by the Administration of Justice Act. New rules had been adopted in May 2000 and, although consideration had been given as to whether there was a need for solitary confinement at all in pre-trial detention, the Government felt that, in some cases, the possibility of conducting interrogations and obtaining a correct verdict in a case depended on the possibility of cutting off an accused person's contact with fellow suspects, witnesses and others. The Standing Committee on Administration of Criminal Justice had to evaluate the new amendments and give its opinion on them by 2005.

6. In response to Mr. González Poblete's question as to how the rules of solitary confinement accorded with those of defence, she pointed out that the right to defence was a clear principle in Danish law and that the rules of solitary confinement did not interfere with that right. Moreover, solitary confinement could be imposed only when there were good reasons to assume that remanding the accused in custody would not prevent him/her from obstructing the course of justice or trying to influence other suspects through threats or coercion.

7. Mr. HINDSBERGER, (Denmark) responding to a question on the case in paragraph 43 of the report regarding a Peruvian national whose arm had been broken in a detention cell, said that the police had used a special technique while handcuffing him and that his arm had been broken. However, he had not complained until five hours later when being released. The District Public Prosecutor for Copenhagen had investigated the case and submitted his findings to the Police Complaints Board, declaring that there were no grounds for further investigation or for charges to be brought against the police officers involved. He had also concluded that there was no basis for criticizing the use of handcuffs.

8. However, he did ask the National Commissioner of Police to mention in the textbooks used in the Police Academy for teaching self-defence techniques that an intake of alcohol might influence a person's sensitivity to pain and to consider whether the textbook description of the arm-twisting holds should be altered in the light of medical conclusions in that particular case. The Director of Public Prosecutions had concurred in the decision and had added that, although the District Public Prosecutor had asked the National Commissioner to consider altering the text in the manuals, that request did not provide a basis for claiming compensation in the current case.

9. The Ministry of Justice had agreed with the National Commissioner's decision that no error had been made by the police and refused to pay compensation. The question of the arm-twisting technique had thus been considered at several levels and the case had not given rise to any changes in regulations or procedures.

10. With regard to the training programme "NGO and Police Against Prejudice" mentioned in paragraph 40, he pointed out that the programme was a pilot project for the staff of the Copenhagen Police in 1999. The programme had not been offered again, but the general experience gained had been used in training new police officers at the Academy in Copenhagen.

11. With reference to the composition of the police force, 29 evening classes had been held since 1996 to try to encourage young people having a non-Danish ethnic background to join the police. Since 1 April 2001, 17 candidates of non-Danish ethnic background had been accepted in the Police Academy.

12. A member of the Committee had asked a question about the use of force and, more specifically, dogs in crowd control. The Police Commission appointed in 1998 by the Ministry of Justice had recommended in early 2002 that a codified legal basis should be established for police use of force. The Commission had also recommended that dogs should be used against passive resistance only when less radical methods had been tried and had failed. The Commission's proposals were currently under consideration.

13. Mr. SCHIØLE (Denmark) responding to questions concerning solitary confinement for convicted offenders, said that he would focus on segregation in solitary confinement in accordance with section 63 of the Act on Enforcement of Sentences. The Prisons and Probation Service could decide that an inmate should be excluded from association with other inmates, to prevent a risk of escape, for example. Exclusion from association differed from a disciplinary punishment in that it was prophylactic. Inmates excluded from association would be segregated in special rooms, in a special unit or in their own room. However inmates could also be placed under restricted association, for example with just one other fellow inmate.

14. Having decided to exclude an inmate from association, the institution had to review the situation at least once a week and, for every four weeks an inmate was excluded, the Prisons and Probation Service had to be notified so that it could review the case. In March 2001, the Prisons and Probation Service had set up a Working Group to consider the extent to which changes to the rules on pre-trial detention in solitary confinement should be reflected in the rules on solitary confinement of convicted offenders.

15. The Working Group had decided that exclusion from association was necessary to maintain peace and security in institutions but that for humanitarian reasons, the use of exclusion should be restricted as much as possible. The Working Group had also made recommendations on inmates excluded from association for more than three months and had found that the most expedient solution was the establishment of small, high-security units housing four to eight persons. Special units had therefore been set up in two State prisons. The Working Group had not, however, recommended that a special right to judicial review be instituted with regard to the exclusion from association when it was used as a preventive tool.

16. The Working Group's report had been presented to Parliament and to the Parliamentary Ombudsman and would be discussed in the Legal Affairs Committee of the Danish Parliament before any final decisions were reached.

17. In response to a request for statistical information on solitary confinement used as a preventive tool, he said that, in 2000, 740 decisions were made by the Prisons and Probation Service to use solitary confinement, 65 per cent of which were terminated within seven days. In 27 cases, the confinement had lasted over 28 days. That was a significantly lower number than in 1999 when 66 cases had lasted over 28 days.

18. Sexual violence in prisons was an issue of which the Prisons and Probation Service was aware but it was not a major problem in Denmark. In response to the request for data on the composition of the prison population, a copy of Denmark's statistical yearbook would be given to the Secretariat.

19. As for the question regarding "negatively strong inmates" they were typically inmates with connections to biker gangs who exploited their co-inmates in prisons and had a very negative influence. In 1999, Parliament had set up three closed units to segregate negatively strong inmates from others. Inmates placed in the units could associate with one another and had the same rights as other prisoners. The units had been in operation for two years and had been found to be effective in combating inter-prisoner violence and intimidation.

20. Mr. ISENBECKER (Denmark), responding to a request for further information on the debate on asylum in Denmark and the rights of asylum-seekers, said that, on 17 January 2002, his Government had launched a policy paper called "A New Policy for Foreigners" calling for amendments to the Aliens Act. The initiatives had been transformed into a bill which was currently under consideration in Parliament. One initiative was to abolish the de facto refugee status and introduce a new type of residence permit with "protected status" for those at risk of the death penalty, torture, or other forms of punishment if returned to their country. The new concept ensured that Denmark would provide protection in all cases where it would be inappropriate for it return refugees to other countries. Article 3 of the Convention had played a key role, as reflected in the explanatory remarks on the bill which contained a specific reference to the article and instructed immigration authorities to administer the provisions so as to avoid refoulement to a State where there were substantial grounds for believing that the alien would be subject to torture or other cruel, inhuman or degrading treatment or punishment. The reply to the question as to whether an asylum-seeker had the right to choose a lawyer was in the affirmative, with the Refugee Board assigning the lawyer and the State covering the costs.

21. With regard to section 31 of the Aliens Act containing a provision against refoulement, the wording of the provision was absolute with regard to aliens in danger of persecution on the grounds set out in the 1951 Convention relating to the Status of Refugees. Aliens in danger of persecution as described in the provision regarding de facto status were also protected unless they posed a risk to Danish national security or, if after final conviction for a particularly dangerous crime, they were assumed to pose an immediate danger to the life, health or liberty of others. That provision had to be applied, however, in accordance with article 3 of the Convention. The Government had submitted a bill to Parliament which proposed formulating section 31 of the Aliens Act to reflect the absolute provision of refoulement as set out in article 3 of the Convention.

22. A question had been asked about the rules governing the return of asylum-seekers to safe third countries without being given access to Danish asylum procedures. The rules were that an asylum-seeker could not be returned to a country where there was a risk of persecution or where the asylum-seeker would not be protected against being sent back to such a country. A bill currently before Parliament proposed that the criteria for being considered a "safe" third country should be more expressly specified in the Aliens Act. Finally, with regard to the prevention of the refoulement of an asylum-seeker, the immigration authorities would continue to comply with requests from the Committee to suspend their enforcement of decisions to return an alien to his/her country of origin.

23. Mr. LEHMANN (Denmark) said that proceedings had been instituted in the Thule case and the High Court had ruled in favour of the local population. The case had passed on to the Supreme Court. His Government had given a full account of the background to the case to the Committee on the Elimination of Racial Discrimination. With reference to the same case, Denmark had been found not to be in breach of International Labour Organization (ILO) Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries. Regarding the Israeli ambassador to Denmark, the position of the Danish Government was that the individual in question enjoyed immunity under the Vienna Convention on Diplomatic Relations.

24. Referring to the pamphlet Compulsion in Psychiatric Treatment which his delegation had made available to the Committee, and with specific reference to the statement on page 9 that "if the patient is strapped or exposed to other physical compulsion, the patient must be asked whether he or she requests a patients' adviser, and in the affirmative a patients' adviser shall be assigned", he quite understood the Committee's concern that it was hard to see how informed consent could be obtained under such circumstances. Nevertheless, he assured the Committee that the relevant personnel always made the correct decision in the light of the specific circumstances of the case.

25. The CHAIRMAN said that, like many States parties, Denmark found it hard to understand why the Committee was so insistent on creating a separate crime of torture. Torture, the delegation asserted, was already implicit in a number of offences on the statute book. However, in terms of the moral repugnance it provoked, torture was far worse than any other crime; hence the reluctance of Governments to admit its existence by convicting torturers. By the same token, it was difficult to see how any Government could come before the Committee to discuss a non-existent crime. States parties' objections to establishing a separate crime of torture frequently boiled down to political squeamishness when faced with such a "strong" label.

26. On the matter of solitary confinement, he would like to know whether confined persons in Denmark had the right to appeal such a decision or to have it reviewed, and whether they had access to counsel in order to take such a step.

27. Mr. EL MASRY, speaking as Country Rapporteur, said that he was pleased to learn that Denmark had incorporated the Convention into its domestic law, but would welcome more information on the actual procedure followed. He would like to know whether asylum-seekers who had been refused a residence permit were obliged to leave Denmark forthwith and, if so, how they were supposed to alert the Committee to their situation. More details should be provided about the exceptional case of the individual who had been held in solitary confinement for three years. As for the case of the Israeli ambassador, the reporting State should explain why it had not explored other options such as persona non grata status or withholding the Ambassador's agrément.

28. Mr. CAMARA, speaking as Alternate Country Rapporteur, said that the State party really needed to clarify its position on appeals against solitary confinement. Moreover, it seemed that, so long as certain control techniques employed by law-enforcement officers were approved by the regulations, any officer who used them would be absolved from responsibility for his actions. Such an assumption ignored the principle of proportionality. He agreed with the Chairman's remarks on the need for an unambiguous definition of the crime of torture, because problems of interpretation tended to arise when torture was categorized under a number of separate offences.

29. Ms. GAER said that she had been disturbed by the contention that intoxicated persons experienced pain differently (paragraph 43 of the report); such a view could serve as an exculpatory justification for the use of excessive violence by the police.

30. Mr. LEHMANN (Denmark) said that he would transmit the Committee's persuasive arguments for the creation of a separate offence of torture to the Danish political establishment. The lack of such a provision in Danish law should not be interpreted as an unwillingness to face

the reality of torture; it was rather a matter of legal tradition. Likewise, in the case of genocide, the Convention on the Prevention and Punishment of the Crime of Genocide had not been incorporated wholesale into the Danish legal system but had been rewritten in the form of a Danish statute.

31. Mr. FÆRKEL (Denmark) said that the Committee on the incorporation of human rights conventions into Danish legislation (the Incorporation Committee) had transmitted its recommendations to the Ministry of Justice which, in turn, had initiated a wide-ranging consultation process. The Government was still digesting the Incorporation Committee's report, and it was envisaged that the whole process, which would also take account of the views of the Committee against Torture, would take some time.

32. Ms. AXELSON (Denmark) said that solitary confinement at the pre-trial stage had to be ordered by a judge, whose decision could always be challenged in a higher court.

33. Mr. SCHIØLER (Denmark) said that there was no special entitlement to judicial review of the solitary confinement of convicted persons, but the prison authorities ordering confinement were obliged to report to the Department of Prisons and Probation at four-week intervals. Moreover, inmates in solitary confinement could refer their case to the parliamentary Ombudsman. The right to judicial review was specifically denied to inmates placed in solitary confinement for reasons of order and security, the reason being that the Department of Prisons and Probation was better placed to take a decision on the matter than the courts, which lacked the necessary specialized knowledge.

34. The individual referred to by a member of the Committee who had spent three years in solitary confinement had, in fact, been allowed to see other inmates - he was currently in a high-security unit which he shared with another prisoner. Incidentally, his case had also been examined by the Ombudsman, who had upheld the decision to place him in solitary confinement.

35. Mr. HINDSBERGER (Denmark) said that police academies offered very specific and practical guidelines on dealing with intoxicated persons and the use of self-defence holds, and consequently it had not been judged necessary to amend the general regulations on the subject. All police officers were enjoined to use reasonable, proportionate force in restraining individuals, on pain of prosecution.

36. Mr. ISENBECKER (Denmark) said that the recent bill on amending the Aliens Act specified that, when an asylum-seeker had been refused permission to remain in Denmark by the Refugee Board, he/she could be obliged to leave immediately. There was currently a 15-day interval between final refusal and expulsion, and the police were not authorized to set the expulsion procedure in motion before the expiry of the 15-day deadline. In practice, however, many asylum-seekers simply went to ground and thereby avoided expulsion. The Government had therefore resolved to tighten up the procedure by allowing the police to begin the expulsion procedure as soon as the asylum-seeker had received a final rejection. Nevertheless, the bill provided for a stay of expulsion, even after expiry of the deadline, if the Committee against Torture so requested.

The public part of the meeting rose at 4.20 p.m.